

## Maine Revised Statutes

### Title 28-A: LIQUORS

#### Chapter 3-A: ADMINISTRATION AND ORGANIZATION

##### §90. CONTRACT FOR OPERATIONS OF WHOLESALE LIQUOR ACTIVITIES

**1. Statement of purpose.** The Legislature finds that it is in the public interest to seek efficiencies and maximize growth in the State's wholesale spirits business while ensuring that growth in revenue from the business is achieved in a socially responsible manner. The contracting of the operations of the wholesale spirits business should serve this purpose and provide the State's agency liquor store partners with effective and efficient services in order to responsibly serve consumers of spirits in the State.

[ 2013, c. 269, Pt. A, §4 (NEW) . ]

**2. Contract for operations.** The Commissioner of Administrative and Financial Services, referred to in this section as "the commissioner," shall enter into a contract for warehousing, distribution and spirits administration and a contract for spirits trade marketing, each for a term of 10 years. Each contract must be awarded pursuant to a competitive bid process in a manner similar to the process described in Title 5, chapter 155, subchapter 1-A. The commissioner is prohibited from contracting with a bidder who also holds a license in this State or another state to distill, bottle or manufacture spirits.

[ 2013, c. 269, Pt. A, §4 (NEW) . ]

**3. Development of request for bid proposals; fee.** The commissioner shall develop a request for proposals designed to encourage vigorous bidding for the purpose of awarding 2 contracts for the operations of the State's wholesale spirits business. The commissioner shall request bids for the operation of spirits trade marketing separately from bids for the combined operations of warehousing, distribution and spirits administration. In order to be considered for a contract to conduct spirits trade marketing, a bidder must submit a nonrefundable application fee of up to \$5,000. In order to be considered for a contract to conduct warehousing, distribution and spirits administration, a bidder must submit a nonrefundable application fee of up to \$20,000. The application fee must be credited to an Other Special Revenue Funds account within the division of purchases within the Department of Administrative and Financial Services to be used for managing the application process. A request for proposals must inform potential bidders of the State's target gross revenue profit margin over the term of the contract and require the bidder to affirm that the bidder, or any of the principal officers of the bidder, does not hold or have a direct financial interest in a license or permit in this State or any other state for the distillation, bottling or manufacture of alcoholic beverages. The request for proposals must instruct potential bidders to propose the scope of operations the bidder will provide and the fee for that service expressed as a percentage of revenue generated by the wholesale business. The request for proposals must direct bidders to indicate if the bidder intends to use subcontractors and to identify those subcontractors. The request for proposals must also inform potential bidders that they may propose incentives for the bidder intended to encourage responsible growth of revenue and enhanced efficiencies in services provided.

[ 2013, c. 269, Pt. A, §4 (NEW) . ]

**4. Information provided by bidders.** A bidder seeking consideration of the award of a contract for the operations of the State's wholesale spirits business pursuant to this section shall comply with the requirements of this subsection.

A. A bidder on a contract to operate the warehousing, distribution and spirits administration functions of the wholesale spirits business shall identify services or operations for which the bidder may use a subcontractor and shall demonstrate:

- (1) The bidder's financial capacity and access to capital to maintain the operations;
- (2) The bidder's capabilities to provide adequate transportation and distribution of liquor to agency liquor stores;
- (3) The bidder's warehousing capabilities and proposed bailment rates for liquor and related fees to be charged to liquor suppliers;
- (4) That the bidder, including any principal officer of the bidder and any named subcontractor, is of good moral character and has not been found to have violated any state or federal law or rule governing the manufacture, distribution or sale of alcoholic beverages;
- (5) The bidder's knowledge of the wholesale liquor business, alcoholic beverage industry or a related field;
- (6) The bidder's plan to provide agency liquor stores with a minimum of 2 deliveries per week;
- (7) The bidder's methods for processing orders and invoices, including any minimum ordering requirements, split case restrictions and inventory control plans;
- (8) The bidder's business plan to provide services in a manner that will assist the State in achieving a target growth rate comparable to or exceeding that of other states that control the sale and distribution of alcoholic beverages;
- (9) The bidder's plan for enhancing services to liquor suppliers and agency liquor stores; and
- (10) The positive impact on the economy, employment and state revenues that the bidder's overall proposal will provide. [ 2013, c. 269, Pt. A, §4 (NEW) . ]

B. A bidder on a contract to provide spirits trade marketing shall:

- (1) Demonstrate the bidder's business plan and marketing strategies to encourage responsible growth to the wholesale spirits business;
- (2) Demonstrate the bidder's experience or knowledge, if any, of responsible marketing of alcoholic beverages;
- (3) Identify services for which the bidder may use a subcontractor;
- (4) Demonstrate that the bidder, including any principal officer of the bidder and any named subcontractor, is of good moral character and has not been found to have violated any state or federal law or rule governing the manufacture, distribution or sale of alcoholic beverages; and
- (5) Demonstrate the positive impact on the economy, employment and state revenues that the bidder's overall proposal will provide. [ 2013, c. 269, Pt. A, §4 (NEW) . ]

In addition to the requirements of paragraphs A and B, the commissioner, in order to ensure that the objective of maximizing growth in the State's wholesale spirits business is achieved, may require bidders to provide additional information, including disclosure of the potential of a bidder's direct and substantial conflict of interest with the State's financial interest.

[ 2013, c. 269, Pt. A, §4 (NEW) . ]

**5. Award criteria and issuance of contract.** The commissioner shall select successful bidders for the contract to conduct the operations of warehousing, distribution and spirits administration and the contract to provide spirits trade marketing; however, both contracts may be awarded to the same bidder. The commissioner shall choose the best value bidder in conformity with Title 5, section 1825-B, subsection 7 and shall consider as criteria for award the information required to be provided in subsection 4, as applicable. When selecting a successful bidder for the contract to conduct the operations of warehousing, distribution and spirits administration, the commissioner may not consider as cause for disqualification for consideration any weakness in or inability to demonstrate proficiency in any one criterion listed in subsection 4, paragraph A, subparagraphs (6) to (10).

The commissioner shall ensure that the following criteria are met before entering into a contract with a bidder for operations of warehousing, distribution and spirits administration:

- A. That revenue to the State from the sale of spirits is predictable over the term of the contract; [ 2013 , c. 269 , Pt. A , §4 (NEW) . ]
- B. That revenue from the sale of spirits will be maximized by the issuance of the contract and achieved through efficiency of services or profit sharing or both; [ 2013 , c. 269 , Pt. A , §4 (NEW) . ]
- C. That the contract establishes standards of efficiency and quality of operations; [ 2013 , c. 269 , Pt. A , §4 (NEW) . ]
- D. That the bidder has demonstrated that services provided to agency liquor stores will be enhanced; [ 2013 , c. 269 , Pt. A , §4 (NEW) . ]
- E. That, upon execution of the contract, the disruption of services to agency liquor stores and suppliers will be minimal or absent; and [ 2013 , c. 269 , Pt. A , §4 (NEW) . ]
- F. That the contract provides that the bureau must approve all bailment rates and related fees. [ 2013 , c. 269 , Pt. A , §4 (NEW); 2013 , c. 368 , Pt. V , §61 (REV) . ]

[ 2013 , c. 269 , Pt. A , §4 (NEW); 2013 , c. 368 , Pt. V , §61 (REV) . ]

**6. Contract provisions; oversight and performance review.** A contract provided to a successful bidder in accordance with this section must require that the person awarded the contract submit to the bureau, in a form determined by the bureau, an annual report audited by an independent 3rd party. The bureau, following receipt of the report, shall provide the report annually to the joint standing committees of the Legislature having jurisdiction over appropriations and financial affairs and alcoholic beverages matters. The contract must prohibit the person awarded the contract from engaging in activities reserved for agency liquor stores licensed as reselling agents to provide spirits to establishments licensed for on-premises consumption. The contract must also include provisions that allow for ongoing performance standards review so that deficiencies in such standards may result in amendments to the contract or nullification. Performance standards subject to contract amendments or nullification include:

- A. Working in partnership with the State to achieve the goal of a revenue growth rate comparable to the average growth rate of other states that control the sale and distribution of alcoholic beverages; [ 2013 , c. 269 , Pt. A , §4 (NEW) . ]
- B. Transparency in annual reporting and conformance to the reporting requirements established by the bureau; and [ 2013 , c. 269 , Pt. A , §4 (NEW); 2013 , c. 368 , Pt. V , §61 (REV) . ]
- C. Except for a contract awarded to conduct spirits trade marketing, responsiveness to the service needs of agency liquor stores. [ 2013 , c. 269 , Pt. A , §4 (NEW) . ]

[ 2013 , c. 269 , Pt. A , §4 (NEW); 2013 , c. 368 , Pt. V , §61 (REV) . ]

**7. Price regulation.** The bureau shall regulate the wholesale and retail prices of all liquor sold by a person awarded a contract in accordance with this section.

[ 2013 , c. 269 , Pt. A , §4 (NEW); 2013 , c. 368 , Pt. V , §61 (REV) . ]

#### SECTION HISTORY

2013 , c. 269 , Pt. A , §4 (NEW). 2013 , c. 368 , Pt. V , §61 (REV).

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